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FIRST APPEAL NOS. 32/84 TO 35/84 with Cross-Objections
in F.A.No.32/84 and with FA No.2042/83 & 2043/83

Date of Decision : 24.6.1996

For Approval & Signature

THE HON'BLE MR. JUSTICE N.J.PANDYA

AND

THE HON'BLE MR. JUSTICE A.R.DAVE

1. Whether reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ?
5. Whether it is to be ...

Civil Judge ?

F.A.Nos. 32/84 TO 35/84 " WITH CROSS-OBJECTIONS IN FA 32/84

Shri S.N.Shelat with Shri H.M.Parikh, LA for the Appellants
Shri D.F.Amin, L.A. for the Respondent

FA NO. 2042/83 & 2043/83 :

Shri D.F.Amin, L.A. for the Appellants
Shri S.N.Shelat with H.M.Parikh, L.A. for the Respondents

CORAM : N.J.PANDYA & A.R DAVE,JJ

24.6.1996

ORAL JUDGMENT : [PER ; PANDYA, J]

F.A.Nos. 32/84 to 35/84 are filed by the S.T.Corporation and FA Nos. 2042/83 and 2043/83 are filed by the respective claimants. Cross-objections are also filed in FA No.32/84.

S.T.Bus bus No. GRT 6802 was swept away by flood water of river Orsang between Chhota-Udepur and Bodeli and that incident took place on 10.8.1991. Incident has resulted into the death of bus driver as well as death of conductor. Three passengers have also lost their lives. In respect of death of Conductor, MAC Petition No. 585/81 was filed by widow of said deceased conductor and other dependents and cross-objections were also filed for enhancing the compensation. ST Corporation filed Appeal No. 32/84 in this regard.Claimants have also filed cross-examinations in this appeal. Claimants of MAC Petition No.13/82 have filed FA No. 2042/83 and Insurance Company filed cross F.A.No. 33/84. Claimants of MAC Petition No. 14/82 have filed FA No. 2043/83 and Insurance Company filed cross F.A.No. 34/84. Insurance Company filed FA No. 35/84 in respect of MAC Petition No. 15/82.

On behalf of S.T.Corporation, in connection with FA No.32/84 with cross-objections,it was urged that as the Conductor has died during the course of his duty, his dependents cannot get the amount in excess of amount that was payable to them under the provisions of The Workmen's Compensation Act. In our opinion, there is no substance in this submission.

Sec. 110AA of the Motor Vehicles Act, 1988 clearly lays down that if a workman happens to be the claimant, he has an option to proceed either under the provisions of The Workmen's Compensation Act or under General Law before the Tribunal under the M.V.Act, but he cannot pursue the remedy under the both. If he has recovered compensation under The Workmen's Compensation Act, obviously, it would be a bar for remedy under the General Law.

That being not so here and there being no statutory provision whatsoever that if claimant is entitled under the General Law to receive compensation to be awarded by the Tribunal, that amount of compensation is to be restricted to the figure as specified in the Schedule attached to The Workmen's Compensation Act and hence, we disallow this contention.

Coming to the cross-objections, in our opinion,1 the Tribunal has erred in fixing the compensation because it did not

take into consideration the future rise in income of a Conductor. As per the pay register produced before the Tribunal, salary including allowances of the deceased Conductor was Rs. 736.64 and in this behalf salary was sought to be determined between Rs.800/ to Rs. 1000/. Learned Tribunal turned down this submission on the ground that salary-sheet does not support the same. If the learned Tribunal has kept before its mind the possibility of future increase in salary, said claim of taking salary to be Rs. 1000/ could have been accepted. That point having been missed and we have gone through the judgment pertaining to this particular claim petition from para-23 onwards up to para-28, we found that the learned Judge has really missed it. Obviously, that has to be considered and due weightage be given to it.

Monthly dependency figure having been worked out in para-27 to be Rs. 516/, on that basis, he has worked out yearly dependency figure at Rs. 6200/ rounding off the same. However, in our opinion, said figure of Rs. 1000/ p.m. could be taken as dependency and that would take care of future increase in income and uncertainty in service also. Once this figure is taken into consideration, this will lead to additional monthly figure of Rs. 484/ to be taken as dependency figure.

Multiplied by 12 would give the figure 5808/ and multiplier of 15 to the said amount would give us figure of Rs.87120/. Cross-objections are filed only for Rs. 87000/ and, therefore, we allow the same in its entirety with costs and interest at the rate of 12% p.a. from the date of application till realisation.

This leads us to FA No. 2042/83 filed by the Claimants of MAC Petition No. 13/82 and cross First Appeal No. 33/84 filed by the Insurance Company. In our opinion, the learned Judge after considering all the relevant material and more particularly the fact that the deceased was hardly 20 years old and applicant being 22 years of age, there is distinct possibility of remarrying and, therefore, the Tribunal has fixed the amount of Rs. 18500/ and rightly so. We, therefore, dismiss both the appeals.

So far as FA No. 2043/83 filed by the claimants of MAC Petition No. 14/82 and cross FA No. 34/84 filed by the Insurance Company are concerned, the original MAC Petition was filed in respect of death of one Dilavarkhan Pathan. The Appeal filed by the claimant is restricted to sum of Rs. 25000/, and in our opinion, it is eminently justified. The reason is that the deceased was aged 45 years and, therefore, 12 years service was left. His salary at the relevant time was Rs. 525/ p.m. and the learned Judge has taken datum figure to be Rs. 300/ deducting Rs. 225/ towards personal expenses. As in the case of

the Conductor, here also, the learned Judge has not considered the likely future increase on account of upward salary revision of the deceased. We would, therefore, like to add the deducted sum of Rs. 225/- to the datum figure which would give same figure of Rs. 525/- and multiplied for 12, would give figure of Rs. 2700/- and multiplier of 10 would give figure of Rs. 27000/-. Since, the appeal is restricted to Rs. 25,000/-, we allow the appeal in its entirety with proportionate costs and interest at the rate of 12% p.a. from the date of application till the realisation.

Deceased was house wife aged about 50 years. Quantifying her contribution to the family at Rs. 100/-, learned Judge has capitalised the sum by 12 and has awarded a sum of Rs. 14,400/- towards economic loss and Rs. 5000/- were added as conventional amount. In our opinion, this is the correct approach of the learned Judge and we would not disturb the same. Hence, FA No.35/84 is hereby dismissed.

Before we part with the matter, we would like to observe that an attempt was made by the ST Corporation to contend that it was inevitable accident or accident happened on account of natural force, cannot be sustained because the case put forward by the claimant that the deceased conductor had taken precaution of getting down and advising the driver not to take the risk, has been established by examining the surviving passenger of the bus involved in the mishap. The only other person that could have deposed in this regard namely bus driver having died, ST Corporation is left with the contention raised in the written statement only. The finding given by the Tribunal that the deceased driver was negligent, therefore, cannot be disturbed.

The net result, therefore, is that First Appeal Nos. 32/84 to 35/84 filed by the S.T. Corporation are hereby dismissed. Cross-objections in FA No.32/84 is allowed to the extent stated above and so is cross-appeal i.e. FA No.2043/83 is also allowed to the aforesaid extent. Cross-Appeal being FA No. 2042/83 is dismissed. No order as to costs.

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